उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	HIGH COURT OF CHHATTISGARH AT BILASPUR **M. A. NO.877 OF 2005** **APPELLANTS** (Claimants)	1. Gulapi Bai, widow of late Ashwani Kumar Suryavanshi, aged about 27 years. 2. Suryakant, S/o Late Ashwani Kumar Suryavanshi, aged about 5 years. 3. Kholbahra, S/o Late Nankuram Suryawanshi, aged about 67 years. 4. Mongra Bai,D/o Kholbahra Suryawanshi, Aged about 62 years. Appellant No.2 is minor represented through his mother Gulapi Bai (appellant No.1) All the appellants No.1 to 4 are permanent residents of Village Rasauta, Police Station: Pamgarh, Distt: Janjgir-Champa, Chhatisgarh, Presently residents of Chingrajpara, Shyam Nagar, Bilaspur, Chhattisgarh. Vs

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	RESPONDENTS	1. Naresh Suryawanshi, S/o Teras Suryawanshi, Aged about 37 years, Permanent address Village Rasauta, Police Station: Pamgarh, Distt: Janjgir-Champa, Chhatisgarh, Present address Near Jarhabhata Chowk, Bilaspur Chhattisgarh (Owner of TVS Suzuki bearing registration No.CG-111/7275) 2. The Zonal Manager, United India Insurance Company Ltd. Transport Nagar, Korba, Through the Branch Manager, United India Insurance Company Ltd Rajendra Nagar Chowk, Bilaspur Chhattisgarh.
	Present: Mr. Sanjay K Agarwal, Advocate with Mr. Saurabh Sharma, Advocate for the appellants. None for respondent No.1. Mr. H.B. Agarwal, Sr. Advocate with Miss Sangeeta Mishra, Advocate for respondent No.2.	

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

20

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL JUDGMENT
(Passed on 15.6.2007)

Dhirendra Mishra, J:

1) The claimants' have preferred this appeal against the award dated 24.3.2005 passed by the Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.98/2003 whereby a sum of Rs.2,59,000/- has been awarded as compensation towards the death of Ashwani Kumar Suryavanshi, husband of appellant No.1 and father of appellant No.2, who died on 18.12.2002 while driving motorcycle bearing registration number CG11-7275 belonging to respondent No.1, which was dashed by a truck resulting in instantaneous death of Ashwani Kumar.

2) The appellants have preferred the application for compensation with the averments that Ashwani Kumar was travelling in the said TVS Suzuki along with Gangaram alias Baiga as a pillion rider. However, the handle of motorcycle all of a sudden got locked as a result of which motorcycle was dashed with the truck. The deceased sustained grievous injuries and ultimately succumbed to the injuries. It was further averred that the deceased was a Mason by profession and was earning Rs.125/- per day as wages. The motorcycle was insured by respondent No.2 for

GRPRJ — FS/246— 2/2007 — 50,000.

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the relevant period. However, the driver, owner and insurer of offending truck were not made parties.

3) Respondent No.1 was proceeded ex-parte. Respondent No.2 in its reply admitted that the vehicle was insured by them, however, it was submitted that the deceased did not have the valid driving license. He was not the 3rd party to the incident as he himself was rashly & negligently driving the vehicle at the time of accident and it is a case of hit & run where the truck after causing accident had fled from the scene of occurrence. It was further submitted that the application was not maintainable on the ground of non-joinder of necessary parties i.e. driver, owner and insurer of offending vehicle, though the offence was registered against the driver of unknown truck.

4) On the pleadings of parties, issues have been framed and the tribunal allowed the application of claimants and awarded a sum of Rs.2,59,000/- as compensation on various heads with a finding that the accident occurred because of the accident of motor cycle No.CG11-7275 due to mechanical failure resulting in death of Ashwani Kumar. It was further held that since the application has been filed under Section 163 of the Motor Vehicles Act, the factum of contributory negligence is immaterial and has not been dealt. Further holding the wages of deceased at Rs.100/-

GRPRJ — FS/246— 2/2007 — 50,000.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

per day and taking 210 days as annual working days, the annual income of the deceased has been assessed at Rs.21,000/- and accordingly after making deduction of 1/3rd and applying multiplier of 18 amount of compensation has been assessed.

5) Learned counsel for the appellant submits that the tribunal even after holding that the appellant was earning Rs.100/- per day as wages has erroneously held that he was employed for a period of only 210 days in the whole year. Placing reliance on the judgment of the Division Bench of this High Court in the matter of **Shiv Kumar and others Vs. Maleshram and others** reported in **2006 L.T. (CG) 96** it is submitted that the tribunal ought to have assessed the compensation by taking monthly wages of deceased at Rs.3,000/-.

6) On the other hand, learned Sr. Counsel for respondent No.2 submitted that deceased was engaged in the job of mason and the tribunal has rightly held that nature of job in which deceased was engaged is seasonal and not available throughout the year. Therefore, the finding of the tribunal that the deceased was engaged gainfully for a period of 210 days cannot be faulted and the award is just and proper.

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	7) I have heard learned counsel for the parties and perused the evidence available on record. 8) Gulapi Bai (AW-1), widow of deceased, has stated that her husband was earning Rs.125/- per day and he worked for all the 30 days in a month. Chhotelal (AW-2) has stated that he had worked with Ashwani Kumar for 10-12 years as a mason, he worked with him before 4-5 years from the date of his examination before the tribunal and at that time when he was working with him, he was receiving Rs.100/- per day as wages. He admitted the suggestion given by counsel for respondent No.2 that Sunday used to be holiday. However, he has further stated in the cross-examination that searching for work in the village is not required. 9) Thus, from the un-rebutted evidence available on record, computation of annual income of the deceased on the assumption that deceased could not work more than 210 days in a year cannot be justified. In aforesaid circumstances relying upon the judgment in the matter of Shivkumar (supra) it would be just and proper if the compensation payable to the appellants is assessed by taking monthly income of deceased at Rs.3,000/-. Out of this Rs.3,000/-, 1/3rd be deducted towards personal expenses of deceased. Thus, actual loss of dependency per	

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

month would be Rs.2,000/-. Considering that the age of the deceased has been assessed between 27-28 years on the date of accident, therefore, appropriate multiplier to be applied for assessing loss of dependency is 18. Thus, the total loss of dependency would be Rs.4,32,000/- (Rs.2,000 x 12 x 18). In that view of the matter, the compensation payable to the claimants would be as under:-

Loss of dependency	=	Rs.4,32,000/-
Loss of consortium to widow	=	Rs.5,000/-
Funeral Expenses	=	Rs.2,000/-
Total compensation	=	**Rs.4,39,000/-**

10) In the result, for the foregoing reasons, the appeal is allowed and in substitution of the impugned award, total compensation of Rs.4,39,000/- with interest @ 9% from the date of award till payment is awarded.

11) Out of Rs.4,39,000/-, appellant No.3 & 4 shall be entitled for Rs.75,000/- each and proportionate interest. Appellants No.1 & 2 i.e. widow & son of deceased each shall be entitled to 50% of remaining amount and proportionate interest. The Insurance Company shall deposit the balance amount of compensation before the M.A.C.T. within a period of one month from today. On such deposit being made, the M.A.C.T. shall deposit the total amount of

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Roshan/-	compensation payable to appellant No.2-Suryakant in a nationalized bank for a period of five years along with interest accrued thereon in a fixed deposit scheme. Similarly, 80% of the total compensation payable to appellants No.1, 3 & 4 shall be deposited in a nationalized bank in a fixed deposit scheme for a period of five years. However, the interest accruing thereon shall be disbursed to the appellants. **Sd/-** **DHIRENDRA MISHRA** **Judge**	